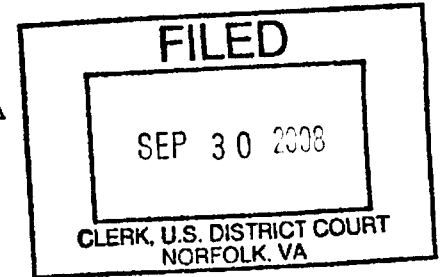


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



MICHAEL MCEVILY, #339637,

Petitioner,

v.

2:08CV326

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on November 9, 1999, in the Circuit Court of Fairfax County, Virginia, for petit larceny (felony), third or subsequent offense. As a result of the conviction, petitioner was sentenced to two years imprisonment, with one year and three months suspended, and a two year period of probation.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on September 3, 2008. By copy of the report, petitioner was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on September 22, 2008, objections to the report.

The Court, having reviewed the record and examined the objections filed by petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the

findings and recommendations set forth in the Report of the United States Magistrate Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis that the petition is successive.

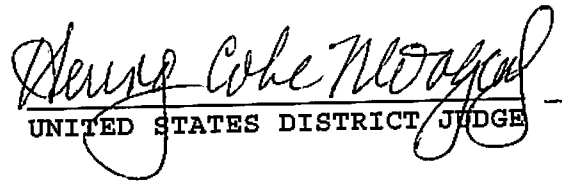
To the extent that petitioner objects to this Court and the Magistrate Judge reviewing his petition because "several members of the Court" have been named as respondents in their individual capacities, the objections are without merit. Petitioner reiterates the arguments raised in his response to the Magistrate Judge's Order of July 21, 2008, which were fully and fairly addressed by the Magistrate Judge in the report and recommendation and require no further response from this Court. Petitioner is simply not entitled to name members of this Court as respondents in a habeas petition.

To the extent that petitioner objects to the Magistrate Judge's finding that the petition is successive, the objections are without merit. Once again, petitioner merely reiterates the arguments raised in his petition, which have been fully, fairly, and properly addressed by the Magistrate Judge in the report and recommendation and, therefore, require no further response from this Court. The petition is clearly successive, and since petitioner has failed to seek permission from the Fourth Circuit to file a successive petition, and has failed to raise any new arguments in his objections, no further consideration will be given to petitioner's petty allegations.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing

of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.


UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

September 30, 2008